

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

DELORICE BRAGG, as Administratrix of
the Estate of Don Israel Bragg, and FRED A
HATFIELD, as Administratrix of the Estate
of Ellery Hatfield,

Plaintiffs,

v.

Civil Action No.: 2:10-0683
Judge John T. Copenhaver, Jr.

UNITED STATES OF AMERICA,

Defendant.

**DEFENDANT UNITED STATES OF AMERICA'S
MOTION TO DISMISS PLAINTIFFS' COMPLAINT**

Pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure,
defendant United States of America moves the Court to enter an order to dismiss the plaintiffs'
Complaint on the following grounds:

1. The federal Mine Health and Safety Act, 30 U.S.C. § 801, et seq., (the "Mine Act"), does not create an express or implied right of action to sue the United States for alleged violations of that Act.
2. The Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b), 2671-2680 (1988) does not waive the sovereign immunity of the United States for violations of federal statutes and federal law.
3. Plaintiffs' claims asserted in the complaint would not give rise to liability for a private person under West Virginia law, and, therefore, the Complaint fails to assert a claim upon which relief may be granted under the FTCA.

4. The plaintiffs have failed to establish a waiver of sovereign immunity by the United States in connection with the allegations asserted in the Complaint.

5. The Complaint fails to meet the requirements of Fed.R.Civ.P. 8 because it fails to allege sufficient facts to support a claim that the plaintiffs are entitled to relief as a matter of law.

Therefore, defendant United States of America respectfully requests that the Complaint and this civil action be dismissed, that judgment be entered in its favor, and that it be granted such other and further relief deemed appropriate by the Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2010, I filed the foregoing Motion to Dismiss Plaintiff's Complaint with Supporting Memorandum via Electronic Case Filing (ECF). Upon the electronic filing of a pleading or other document, the ECF system will automatically generate and send a Notice of Electronic Filing to all CM/ECF participants associated with this case.

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